

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
WISCONSIN ELECTRIC POWER COMPANY)	
for approval, pursuant to MCL 460.6q, of)	Case No. U-16366
the sale of its interest in the Edgewater 5)	
Generating Unit.)	
_____)	

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on October 14, 2010.

Exceptions, if any, must be filed with the Michigan Public Service Commission, P.O. Box 30221, 6545 Mercantile Way, Lansing, Michigan 48909, and served on all other parties of record on or before October 22, 2010, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before October 27, 2010. **The Commission has selected this case for participation in its Paperless Electronic Filings Program. No paper documents will be required to be filed in this case.**

At the expiration of the period for filing of exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for

Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

STATE OFFICE OF ADMINISTRATIVE
HEARINGS AND RULES
For the Michigan Public Service Commission

Mark E. Cummins
Administrative Law Judge

October 14, 2010
Lansing, Michigan
dmp

STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
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Case No. U-16366

PROPOSAL FOR DECISION

I.

HISTORY OF PROCEEDINGS

On June 8, 2010, Wisconsin Electric Power Company (Wisconsin Electric) filed an application--with supporting testimony and exhibits--requesting approval concerning the proposed sale of its 25% ownership interest in the coal-fired Edgewater Unit 5 (Edgewater-5) to Wisconsin Power and Light Company (WP&L), pursuant to Section 6q of 2008 PA 286, MCL 460.6q (Section 6q). According to the documentation filed in support of Wisconsin Electric's application, the underlying reason for the asset's sale is to avoid making additional investment in environmental control equipment for Edgewater-5, which would serve to increase the company's revenue requirements to a level in excess of the projected revenue requirements that would otherwise result from either the plant's retirement or sale (with replacement energy coming from some other source).

Pursuant to due notice, a prehearing conference was held in this matter on July 13, 2010, before Administrative Law Judge Mark E. Cummins (ALJ). In the course of that prehearing, the ALJ granted the joint petition to intervene filed on behalf of Tilden Mining Company, L.C., and Empire Mining Partnership (collectively, the Mines). The Commission Staff (Staff) also participated in the proceedings. Subsequently, the parties signed and submitted a protective order governing the use and disclosure of confidential materials--most of which related directly to the Asset Sales Agreement (ASA) between Wisconsin Electric and WP&L.¹ The protective order was approved and entered by the ALJ on July 14, 2010.

In light of the expedited schedule demanded by Section 6q(5), evidentiary hearings in this matter took place on September 9, 2010.² In the course of those hearings, testimony was received from three witnesses, two on behalf of Wisconsin

¹ Wisconsin Electric is a Wisconsin corporation engaged in the business of providing wholesale and retail electric services in areas located both in Wisconsin and in the Upper Peninsula of Michigan. WP&L is likewise a Wisconsin corporation, but one which distributes electricity solely within the state of Wisconsin. See, 2 Tr 23. Currently, Wisconsin Electric owns an undivided 25% interest in Edgewater-5, while MP&L owns the remaining undivided 75% interest; moreover, pursuant to a 1983 Ownership Agreement entered into by these two entities, WP&L has operational responsibility over the facility. Id.

² In addition to this proceeding, Wisconsin Electric and WP&L jointly filed requests for approval of the proposed asset sale with both the Public Service Commission of Wisconsin (PSCW) and the Federal Energy Regulatory Commission (FERC) in May of 2010. According to Wisconsin Electric (and, at least on the date its initial brief was filed in the present case), the status of those two cases is as follows:

On June 15, 2010, the PSCW issued a Notice of Investigation indicating that it would not hold a hearing on the Joint Application absent a request, and no request for a hearing was made. On August 30, 2010, the PSCW Staff filed its memorandum on the Application and set a due date for comments of September 15, 2010. As of the filing of this brief, only Wisconsin Electric and WP&L filed comments. The PCSW has not yet ruled on the Joint Application.

* * *

The FERC [in Docket No. EC10-69-000] granted its approval of the sale in an order dated June 29, 2010. On July 21, 2010, Wisconsin Electric filed a copy of this decision in the instant proceeding.

Wisconsin Electric's initial brief, p. 10.

Electric and one from the Mines. No witnesses were presented on behalf of the Staff. Based on the agreement of the parties, none of the witnesses was cross-examined; rather, the direct testimony of each was simply bound into the transcript.

The resultant record consists of 85 pages of transcript and 36 exhibits, each of which was received into evidence (and 16 of which received confidential treatment). Pursuant to the schedule established for this case, all of the parties filed briefs on September 20, 2010. On September 27, 2010, Wisconsin Electric and the Staff also filed reply briefs, whereas the Mines submitted a letter to the Commission's Executive Secretary indicating that they would not be submitting a separate reply brief in the present case.

II.

STATUTORY REQUIREMENTS AND PRIOR DECISIONS

Section 6q constitutes Michigan's recently-enacted public utilities mergers, acquisitions, and divestitures law. It begins by stating, in Subsection (1), that:

A person shall not acquire, control, or merge, directly or indirectly, in whole or in part, with a jurisdictional regulated utility nor shall a jurisdictional regulated utility sell, assign, transfer, or encumber its assets to another person without first applying to and receiving the approval of the commission.

MCL 460.6q(1). In deciding whether or not to approve a proposed action covered by this law, Section 6q(7) directs that "the commission shall consider among other factors" all of the following:

- (a) Whether the proposed action would have an adverse impact on the rates of the customers affected by the acquisition, transfer, merger, or encumbrance.

- (b) Whether the proposed action would have an adverse impact on the provision of safe, reliable, and adequate energy service in this state.
- (c) Whether the action will result in the subsidization of a non-regulated activity of the new entity through the rates paid by the customers of the jurisdictional regulated utility.
- (d) Whether the action will significantly impair the jurisdictional regulated utility's ability to raise necessary capital or to maintain a reasonable capital structure.
- (e) Whether the action is otherwise inconsistent with public policy and interest.

MCL 460.6q(7). Moreover, Sections 6q(8) and 6q(9) expressly allow the Commission to "impose reasonable terms and conditions" on the proposed transaction to protect either the jurisdictional regulated utility or its customers, while concurrently allowing the utility to "reject the terms and conditions imposed by the commission and not proceed with the transaction." MCL 460.6q(7) and (8).

Thus far, only a handful of cases have been filed with the Commission pursuant to Section 6q. The first was in Case No. U-16029, in which Upper Peninsula Power Company (UPPCO) and Alger Delta Cooperative Electric Association (Alger Delta) submitted a joint request for approval of the transfer of the Nahma distribution line from UPPCO to Alger Delta. No parties intervened in that case, and the matter was resolved via submission and approval of a settlement agreement concerning the proposed transfer. See, November 12, 2010 order in Case No. U-16029. The second was in Case No. U-16035, where Wisconsin Energy Corporation (WEC), Edison Sault Electric Company (Edison Sault), and Cloverland Electric Cooperative (Cloverland) jointly sought approval of WEC's proposed sale--and Cloverland's purchase--of 100% of WEC's equity interest in Edison Sault. Once again, that case was resolved via

settlement agreement, albeit with Cloverland agreeing to certain restrictions concerning the Board of Directors representation concerning the new, combined utility. See, e.g., April 27, 2010 order in Case No. U-16035, Attachment A. As such, the present case constitutes the first fully-litigated proceeding processed pursuant to the new law concerning mergers, acquisitions, and divestitures.

III.

TESTIMONY AND POSITIONS OF THE PARTIES

As noted earlier, Wisconsin Electric offered testimony from two witnesses in support of its application. The first of these was Christine T. Akkala, the utility's Director of Power Marketing and Planning, whose direct testimony provided, among other things, (1) a description of factors that led Wisconsin Electric to elect to sell its ownership interest in Edgewater-5, (2) a summary of the terms and conditions of the December 22, 2009 ASA entered into between the utility and WP&L, and (3) an analysis of the proposed sale's impact on the provision of safe, reliable, and adequate energy in the state of Michigan. See, 2 Tr 21.

According to Ms. Akkala, an Electric Generation Expansion Analysis System (EGEAS) study performed by the company in June of 2009 determined that a proposed, joint Wisconsin Electric/WP&L construction project--through which Selective Catalytic Reduction (SCR) technology would be added to Edgewater-5 to reduce the plant's nitrogen oxide (NO_x) emissions--would be "more beneficial than retiring Edgewater-5," both from the utility's perspective and that of its customers. 2 Tr 27. Nevertheless, she went on to state that:

In November 2009, . . . Wisconsin Electric updated its EGEAS analysis. Because of changes in market conditions, particularly the significant declines in forecasts for natural gas prices and declines in load forecasts, the updated EGEAS analysis showed that, with respect to Wisconsin Electric's 25% interest, installing the SCR equipment was no longer economic compared to retiring Edgewater-5. Without carbon monetization, installing the SCR equipment was \$89 million more expensive in net present value of revenue requirement for Wisconsin Electric's customers than retiring Wisconsin Electric's share of the unit. With carbon monetization, installing the SCR equipment was \$62 million more expensive for Wisconsin Electric's customers than retiring Wisconsin Electric's share of the unit.

At the same time, WP&L's EGEAS analysis showed that, compared to retiring Edgewater-5, continuing to operate Edgewater-5 with the installation of the SCR equipment would be cost effective for WP&L even if it were to own 100% of the unit.

2 Tr 29. Because selling its 25% interest in the plant was more economical than incurring its share of the cost to install the NO_x-abatement system and because it would also allow Wisconsin Electric to shed some of its excess generating capacity, she testified that the proposed sale was reasonable and prudent. See, 2 Tr 29-30. Turning to the ASA itself, Ms. Akkala noted that WP&L agreed to purchase the asset at:

net book value, plus [construction work in progress], plus reimbursement of the book value of coal inventories and other materials and inventories, plus the operating deposit, plus the deferred balance related to . . . SCR costs [incurred prior to the PSCW's issuance of the certificate of authority regarding that emission-reduction project], each as allocated to Wisconsin Electric's ownership interest.

2 Tr 25-26. She further noted that, as part of the ASA, Wisconsin Electric will retain "all liabilities to the extent that they are related to the ownership and operation of its interest in Edgewater-5 prior to the [sale's] closing," except to the extent that any such liability has been "expressly assumed" by WP&L. 2 Tr 25. Among the pre-closing liabilities to be retained by Wisconsin Electric, Ms. Akkala stated, are those "under or related to environmental laws or environmental permits" with respect to the plant site." Id.

In addition to her direct testimony, Ms. Akkala also offered rebuttal testimony responding to various statements made by the Mines' witness. Among other things, her rebuttal testimony asserted that, contrary to a suggestion by that witness, Wisconsin Electric did not agree to retain "all" pre-closing liabilities, but rather only those "identified in Section 2.2(b) of the ASA. 2 Tr 32. Moreover, she continued, it was not unreasonable to include that provision as part of the proposed sale. Specifically, she stated that:

WEPCO's³ customers would retain pre-closing liabilities if WEPCO continued to own Edgewater-5 or if WEPCO retired its ownership share of Edgewater-5. It is [therefore] reasonable that WEPCO's customers would retain some pre-closing liabilities under the condition that WEPCO sells its ownership share in Edgewater-5.

2 Tr 34.

The second witness offered by the utility was Mary L. Wolter, a Business Consultant in Wisconsin Electric's Finance Department, whose testimony focused on sale's potential effects on both the utility's retail rates and overall financial well-being. Ms. Wolter began by asserting that "no immediate rate impact" would arise from the sale of Wisconsin Electric's interest in Edgewater-5. 2 Tr 41. According to her, because the company's 25% interest in that plant "is being sold at book value, . . . the reduction in rate base will be equally offset by an increase in available working capital," namely, the cash proceeds from the sale. Id. Specifically, she continued, "both rate base and working capital are compensated in current rates at the weighted cost of capital, so this results in no rate impact." 2 Tr 41-42.

³ In various portions of the record, witnesses refer to the utility as WEPCO or WEPCo, as opposed to Wisconsin Electric.

Ms. Wolter went on to concede that, because the sale would result in annual, company-wide reductions of \$1,752,000 in depreciation expense and \$3,311,000 in operating and maintenance (O&M) Expense, “Wisconsin Electric estimates the Michigan jurisdictional impact of these reductions to be approximately \$213,000⁴ on an annual basis.” 2 Tr 42. However, she also pointed out that the asset sale would likely increase power supply costs (due to the purchase of replacement power) and raise the utility’s annual tax expense. Id. Because the company plans to leave rate recognition of these various--and at least somewhat countervailing--changes in expense levels to its “next rate case and power supply filing,” Ms. Wolter reasserted that the proposed sale will not adversely impact its customers. Id. Similarly, she stated that because the proceeds received from WP&L “will simply be reinvested in [Wisconsin Electric’s] utility business,” the proposed transaction will neither serve to subsidize any non-regulated activity nor impair either the utility’s capital structure or its ability to raise capital. See, 2 Tr 42-43.

Like Ms. Akkala, Ms. Wolter also offered rebuttal testimony attacking various assertions made by the Mines’ witness. First, she asserted that the Mines’ witness was wrong in claiming that the \$213,000 annually in reduced depreciation and O&M expense should be returned immediately to Wisconsin Electric’s ratepayers via a rate credit. Second, she claimed that a second \$244,880 revenue requirement adjustment calculated by that witness (arising from the potential \$45 million reduction that he argued should be reflected on the utility’s balance sheet) ignored the fact that much of

⁴ As noted in footnote 1 on page 7 of Ms. Wolter’s pre-filed direct testimony, The Michigan retail jurisdictional allocation of O&M expense as filed in Case No. U-15981 [the utility’s most recent general rate case] was 4.0%, while the allocation of depreciation expense was 4.6%. Thus, her calculation was as follows: $[(\$3,311,000 \times .040) + (\$1,752,000 \times .046)] = \$213,000$.

the sale proceeds would “likely be used to reduce the Company’s short-term debt balances in its capital structure.” 2 Tr. 47. Third, Ms. Wolter stated that his proposed use of an interim customer rate credit “based solely on the removal of [Edgewater-5] from rate base without also considering other contemporaneous offsetting expenses and investment that [would serve to] increase rate base would be premature, unjust, and unreasonable.” 2 Tr 48. Fourth and finally, she testified that his recommendation to take an estimated \$6.7 million in prepaid net salvage currently held in the accumulated depreciation reserve account for Edgewater-5 and use it to lower the depreciation rates for other utility-owned generating units must be rejected because:

it is at odds with the economic substance of this sale transaction, is contrary to Generally Accepted Accounting Principles (GAAP), and violates the FERC’s Uniform System of Accounts’ (USOA) prescribed accounting, which [the Michigan] Commission has adopted.

2 Tr 50.

Based on the testimony and exhibits offered by its witnesses, Wisconsin Electric contends that the Commission should find that it has satisfied each of the five statutory criteria for approval of the proposed sale of its 25% interest in Edgewater-5 to WP&L. Specifically, it asserts that Ms. Akkala clearly showed that the utility met its burden of proving that the asset transfer would not adversely impact its provision of safe, reliable, and adequate electric service within the utility’s Michigan-based service territory, and that the sale would not be in any way inconsistent with either public policy or the public interest. See, Wisconsin Electric’s initial brief, pp. 13 and 15. Likewise, the utility claims that Ms. Wolter offered more-than-adequate evidence to support finding that the proposed sale of its interest in Edgewater-5 to WP&L would not (1) adversely effect its rates, (2) result in the subsidization of some non-regulated activity, or (3) be in any way

inconsistent with either public policy or public interest. See, Id., pp. 11-14. In addition, Wisconsin Electric argues that, notwithstanding contrary assertions by the Mines and the Staff, there is no justification for (1) reflecting (via interim rate credits or otherwise) any change in either rate base, non-fuel related expense levels, or existing depreciation account balances, (2) banning the recovery of costs related to pre-closing liabilities, or (3) imputing a different purchase price for its 25% interest in Edgewater-5 than that reflected in the ASA.

In support of their various positions, the Mines offered the testimony and exhibits of Michael Gorman, Managing Principal of Brubaker & Associates, Inc. Mr. Gorman reviewed Wisconsin Electric's application, testimony, and exhibits, and identified several concerns with the utility's proposed asset sale. According to his overall analysis, he concluded that:

there will be rate-making and accounting issues stemming from the sale that will need to be addressed to ensure just and reasonable rates for Michigan's ratepayers. In addition, he generally found that Wisconsin Electric's decision to retain significant pre-closing liabilities for its share of the plant was not reasonable.

See, Mines' initial brief, p. 5.

With regard to the asserted ratemaking and accounting issues, Mr. Gorman testified that removing all costs related to Edgewater-5 from Wisconsin Electric's balance sheet and income statement should result in "an overall lower revenue requirement" for the utility, and that it would therefore be "unreasonable for Michigan ratepayers to continue paying for costs associated the . . . facility" once Wisconsin Electric has divested its interests in that plant. 2 Tr 63. As a result, he testified that a rate credit should be applied to the utility's Michigan-based ratepayers to effectively

reflect the annual \$457,912 reduction in total jurisdictional revenue requirements arising directly from the plant's sale.⁵ Mr. Gorman further stated that the portion of the plant's accumulated depreciation reserve previously collected to defray the cost of Edgewater-5's ultimate retirement (which he claims essentially constitutes a negative net salvage reserve of roughly \$6.7 million), "should not be removed from WEPCo's books" simply due to the sale at issue here, but rather "should remain on WEPCo's books" until the utility's next depreciation rate case, "when it can be used to lower the depreciation rates of other WEPCo-owned steam plant facilities." 2 Tr 71. In the meantime, he continued, Michigan customers should also be given a rate credit to reflect the annual \$36,719 reduction in jurisdictional revenue requirements due to the sale's elimination of the need to recover prepaid net salvage from those ratepayers. See, 2 Tr 72.

Regarding Wisconsin Electric's retention of pre-closing liabilities, Mr. Gorman expressed concern regarding the "significant environmental and operational" costs that could be assigned to Michigan ratepayers even after the plant's sale should such liabilities ultimately be assigned to the utility. 2 Tr 73. According to him, any such liability should be borne by the utility's shareholders instead. See, 2 Tr 78. As a result, Mr. Gorman recommended that, should the Commission elect to approve the proposed sale, it should "condition its approval on obtaining a commitment from WEPCo that it will not seek recovery for any costs associated with the [Edgewater-5] pre-closing liabilities from Michigan ratepayers." Id.

Based on Mr. Gorman's testimony, the Mines request that the Commission find the utility's proposed sale of Edgewater-5 "not in the public interest." Mines' initial brief,

⁵ According to Mr. Gorman's calculations, his figure of \$457,912 annually consists of \$244,880 from the removal of Edgewater-5's related net plant and working capital, \$132,440 in reduced O&M expense, and \$80,592 in reduced depreciation expense. See, 2 Tr 65.

p. 28. The Mines further assert that, if the transaction is nevertheless approved, the Commission should impose the following three terms and conditions. First, it should remove “all net plant and non-fuel expense related costs” from Wisconsin Electric’s books and, as a result, order the provision of a rate credit in the amount of \$457,912 annually for the utility’s Michigan ratepayers “until such costs are removed from . . . rates in [the company’s] next general rate case.” Id. Second, the Mines contend that the Commission should also provide a rate credit of \$37,917 annually to reflect the \$6.7 million in accumulated negative net salvage depreciation reserve, and keep that rate credit in effect until completion of the utility’s next depreciation rate case. See, Id. Third, they contend that the Commission should “condition its approval of the plant sale on obtaining a firm commitment” from Wisconsin Electric to the effect that “it will never seek recovery of any costs associated with the Edgewater-5 pre-closing liabilities from Michigan ratepayers.” Id., at p. 29.

As noted above, the Staff presented no witnesses in this case. Nevertheless, based on its review of the record, the Staff concludes that although Wisconsin Electric satisfied the four requirements set forth under Section 6q(7)(b)-(e), the utility failed to show that it met the preceding requirement, set forth in Section 6q(a). Specifically, the Staff asserts that the company “has not demonstrated that . . . the proposed sale will not have an adverse impact on customer rates.” Staff’s initial brief, p. 3. The Staff provides two reasons for that assertion. First, it claims that “although Wisconsin Electric has identified an annual savings from the sale, [the utility] failed to propose a customer adjustment to reflect that savings.” Id. Second, the Staff contends that “it is not confident that Wisconsin Electric maximized its proposed recovery on the sale of this

asset through its solicitation process.” Id. The Staff bases this contention on, among other things, the fact that the utility limited its solicitation efforts to informal contacts with regional utilities it thought might be interested in a share of Edgewater-5, did not publish a notice of intent to sell its interest in the plant, and never used a third party to solicit interest from potential buyers. Id., at 5.

As a result, the Staff argues that the Commission should either deny the application or, in the alternative, approve the proposed sale with three conditions, two of which comport with the above-mentioned conditions recommended by the Mines. Specifically, the Staff first requests that any approval of the sale be conditioned upon application of both rate credits initially computed by Mr. Gorman, namely the \$457,912 annual credit arising directly from the plant’s sale and removal from rate base and the \$36,719 annual credit tied to the estimated \$6.7 million in prepaid net salvage.⁶ The Staff’s next requested condition--which again comports with the Mines’ request--is that the Commission obtain “a commitment from Wisconsin Electric that it will not seek recovery from Michigan ratepayers for any costs associated with the [Edgewater-5] pre-closing liabilities.” Staff’s initial brief, p. 7. The third and final condition suggested by the Staff is that the Commission “establish a different purchase price for the sale of this asset”--capped at \$68 million--in light of “the limited solicitation efforts” undertaken by the utility. Id.

⁶ As noted on page 7 of its Initial Brief, the Staff states that although the minimum rate credit arising from this case would have to be \$213,000 (the savings figure calculated by the utility), it “strongly recommends and supports \$494,631” (which represents the total of the two rate credits proposed by the Mines).

IV.

DISCUSSION AND FINDINGS

From all of the above, it appears that no dispute exists with regard to three of the five specifically-enumerated factors set forth in Section 6q(7), at least as that provision applies to the proposed sale of Wisconsin Electric's 25% interest in Edgewater-5. Specifically, uncontroverted testimony and exhibits provided by the utility indicate that the sale would not (1) "have an adverse impact on the provision of safe, reliable, and adequate energy service" [as required by Section 6q(7)(b)], (2) "result in subsidization of a non-regulated activity" of some new entity through rates paid by its customers [as demanded by Section 6q(7)(c)], or (3) "significantly impair" the regulated utility's "ability to raise necessary capital or to maintain a reasonable capital structure" [as necessitated by Section 6q(7)(d)]. As a result, the only open issue in this case is whether the ASA for which Wisconsin Electric seeks approval in this specific proceeding somehow conflicts with either of the other two standards imposed by Section 6q, namely, whether the proposed sale "would have an adverse impact on the rates of the customers affected" by the transaction--pursuant to Section 6q(7)(a)--or whether it is "otherwise inconsistent with public policy and interest"--pursuant to Section 6q(7)(e).⁷

Based on the record as a whole, the ALJ finds that insufficient proof has been provided in this case to justify approving the ASA as it currently stands. This is based on the ALJ's conclusion that neither the first nor the fifth criteria set forth in Section

⁷ Although the Staff explicitly asserts that "the Commission may consider other factors besides the five mandated factors in evaluating a proposed sale" (See, Staff's reply brief, p. 1), the ALJ views the concerns expressed by both the Mines and the Staff as falling squarely within either Section 6q(7)(a) or Section 6q(7)(e). Thus, this proposal for decision (PFD) will not go beyond the analysis and application of those two criteria.

6q(7) have been fully satisfied in this proceeding. Nevertheless, the record does appear adequate to support the agreement's approval, so long as at least one important condition is imposed on the sale of Wisconsin Electric's share of Edgewater-5. What follows is a discussion of the three general conditions proposed by parties to this case for imposition with regard to the ASA, as well as the ALJ's recommendation concerning the efficacy of adopting each of those proposals.

A. Imposition of Interim Rate Credits

As noted earlier, both the Mines and the Staff contend that a total of \$494,631 in annual rate credits should be provided to Wisconsin Electric's ratepayers located in Michigan. A majority of the total proposed credits (\$457,912) relate to expected reductions in rate base and non-fuel expense related costs. The remainder (\$36,719) spring from the accumulated negative net salvage value of the portion of the plant in question. Wisconsin Electric has, as discussed earlier, objected to the imposition of either of these requested rate credits. For the sake of clarity, each of these two potential credits will be addressed separately.

1. Reductions in Plant-related and General Expenses

According to the Mines, there are both rate base- and expense-related items associated with Edgewater-5 that are currently included in the Wisconsin Electric retail rates adopted as a result of the Commission's July 1, 2010 order in Case No. U-15981. With respect to rate base, the Mines note, the plant's costs are included in both the utility's plant-in-service and working capital balance. See, Mines' initial brief, p. 11. As for general expenses, it is noted that Wisconsin Electric incurs both O&M expense and

depreciation expense with regard to its share of the facility. See, Id. Based on its witness's review of the situation, and as reflected on Exhibit MIN-1, the Mines contend that removing Edgewater-5 net plant and non-fuel expense costs from the utility's books would lower Wisconsin Electric's annual Michigan jurisdictional revenue requirement by \$457,912. The Staff concurs with the Mines that, if the utility's proposed asset sale is approved, the Commission should consider the current rate impact on Michigan-based ratepayers. Otherwise, the Staff contends, those customers "would be paying through current rates for a revenue requirement of a plant that Wisconsin Electric no longer owns." Staff's initial brief, p. 4.

The utility responds by arguing that the joint proposal to remove the book value of its investment in, and working capital related to, Edgewater-5 "ignores that Wisconsin Electric made capital investments in 2010 over and above the amounts included in the 2010 test year rate base" adopted for use in Case No. U-15981, and will "continue to make capital investments in the interim period until new rates go into effect pursuant to the next general rate case." Wisconsin Electric's reply brief, pp. 3-4. According to the company, proposing to reduce rate base due to the sale of Edgewater-5 "while ignoring contemporaneous offsetting increases" in both rate base and other expenses is "unreasonable."⁸ Id., p. 4. In addition, the utility contends, Ms. Wolter testified that the proposed transaction would result in Wisconsin Electric's receipt of cash (a component

⁸ The utility also asserts that imposing any rate credit in the context of this proceeding would effectively convert the matter into a single-issue rate case. See, Wisconsin Electric's reply brief, pp. 1 and 3. Although it is true that the Commission is generally reluctant to entertain requests of that nature, imposing a complete prohibition on making any rate adjustments a condition of the approval process established by Section 6q would, to a large degree, write the language of Section 6q(9)--which allows the Commission to "impose reasonable terms and conditions on the acquisition, transfer, merger, or encumbrance to protect the customers of the jurisdictional regulated utility"--out of the statute. The ALJ is not willing to recommend circumscribing Section 6q to such a large degree.

of working capital) in an amount that “will totally offset the reduction in net plant and working capital.” Id., citing 2 Tr 48-49.

Moreover, the company argues that even if one accepts Mr. Gorman’s assertion that the cash proceeds received from the sale should be excluded from working capital and, therefore, rate base should be reduced, “his calculation of the impact on the company’s income requirements is overstated.” Wisconsin Electric’s reply brief, p. 6. According to the utility, Mr. Gorman calculates such impact by assuming that the components in the company’s capital structure will be proportionately the same after the sale as they were upon adoption of the capital structure approved for use in Case No. U-15981. However, it continues, “the assumption is unrealistic and contrary to how Wisconsin Electric--or any utility for that matter--manages its cash flow on a day-to-day basis.” Id. Based on its assertion that it will likely use the proceeds of the asset sale to pay down short-term debt (while leaving long-term debt relatively unchanged), the utility contends that:

if any revenue requirement adjustment is to be made based upon a reduction in rate base, a corresponding adjustment should be made to the capital structure in the form of a reduction of short-term debt. As testified to by Ms. Wolter and shown in Exhibit A-6, the net impact of any adjustment to rate base and the capital structure is no more than \$116,554, [or] less than one-half the \$244,880 calculated by Mr. Gorman.

Id., pp. 6-7.

The ALJ does not find the utility’s arguments persuasive, and thus agrees with the Mines and the Staff that Wisconsin Electric’s Michigan ratepayers should receive a rate credit in the annual amount of \$457,912 to reflect all reductions in plant-related and general expenses that will arise from the utility’s sale of its 25% interest in Edgewater-5. The ALJ reaches this conclusion for the following three reasons.

First, there is no dispute that the company's existing rates include costs associated with the ownership and operation of that facility. Notwithstanding assertions to the effect that--in light of Wisconsin Electric's announced plan to divest itself of the 25% ownership interest in Edgewater-5--those particular costs should not have been included in the calculation of its base rates, significant expenses associated with that plant were included as part of the utility's cost of service in its most recent rate case proceeding. See, the Commission's July 1, 2010 order in Case No. U-15981, pp. 8-11. As noted by Mr. Gorman and reflected on Exhibit MIN-1, Michigan jurisdictional costs totaling \$457,912 annually are included in Wisconsin Electric's current rates due to its currently-existing ownership interest in Edgewater-5, including \$244,880 from plant in service and working capital, \$132,440 in O&M expense, and \$80,592 in depreciation expense.

Second, and notwithstanding Wisconsin Electric's assertion to the contrary, the record does not support finding that any reductions in total rate base will be equally offset by an increase in cash-based working capital. As correctly noted by Mr. Gorman, "while WEPCo's total rate base should decrease to reflect the removal of [Edgewater-5] from WEPCo's plant in service and working capital," it is highly unlikely that an equal (and thus offsetting) increase would be seen in the company's working capital cash balance. 2 Tr 66. Because transferring its ownership interest in Edgewater-5 will most certainly reduce the inventory requirements previously associated with that plant, it is more likely than not that the utility's overall working capital requirements will decline following closing of the sale. Indeed, as pointed out on page 12 of the Mines' brief, "WEPCo's own Exhibit A-2 . . . identifies a total working capital reduction of \$4 million

due to a reduction in fossil fuel inventory and materials and supplies from the sale of the plant.”

Third, Wisconsin Electric’s claim that Mr. Gorman’s rate base-related adjustment is excessive, and that the lower figure computed by Ms. Wolter should be used instead, is unpersuasive. Rather than applying the pre-tax rate of return approved for the utility just over three months ago (in the context of the Commission’s July 1, 2010 order in Case No. U-15981), Ms. Wolter elected to compute a new pre-tax rate of return for use in estimating the effect that removing its 25% ownership interest in Edgewater-5 would have on the company’s finances. However, it appears that Ms. Wolter’s calculation does not actually remove Edgewater-5 costs from the utility’s existing rates, but rather assesses what the effect would be if the utility divested itself of the plant based on a capital structure and rate of return for Wisconsin Electric that the Commission has never approved. Moreover, while she assumes that paying down short-term debt is “most likely” how the utility would use the proceeds of the sale, Ms. Wolter offers no evidence to support that assumption. Finally, because the utility’s cost of short-term debt is only 0.99% while its cost of common equity is 10.25% (See, Exhibit A-6, Schedule 2), it would appear to be a far more reasonable result for Wisconsin Electric to use any proceeds from the sale to pay down the common equity balance held by its parent corporation instead.

For all of these reasons, the ALJ recommends that the Commission require, as a condition for approval of Wisconsin Electric’s proposed sale of its 25% ownership interest in Edgewater-5, that Michigan ratepayers to be given a rate credit in the annual

amount of \$457,912 to reflect all reductions in plant-related and general expenses arising from that sale.

2. Treatment of Accumulated Depreciation

As noted earlier, the Mines contend that Wisconsin Electric should not be allowed to remove from its accumulated depreciation account approximately \$6.7 million related to Edgewater-5, but rather should be directed to retain those funds until the company's next depreciation rate case, at which point they would be used to reduce the depreciation rates for the utility's other generating units. In the meantime, the Mines continue, the company's Michigan ratepayers should be given an annual rate credit (computed by Mr. Gorman to be \$36,719) to reflect such treatment. See, 2 Tr 72. In support of this proposal, the Mines claim that the underlying \$6.7 million reflects the projected negative net salvage value (e.g., cost of retirement) that corresponds to Wisconsin Electric's 25% ownership interest in Edgewater-5. They therefore assert that because this plant (or at least the utility's share of that facility) is being sold before it is being retired, "the prepayments for net salvage [that] the utility has collected through increased depreciation expense levels are no longer needed" and should therefore be returned to its ratepayers in the manner suggested by Mr. Gorman. Mines' initial brief, p. 17. The Staff agrees and, likewise, recommends that approval of the sale in question be conditioned upon the utility's provision of the annual \$36,719 rate credit suggested by Mr. Gorman with regard to "prepaid net salvage." Staff's initial brief, p. 4.

According to Wisconsin Electric, such a recommendation is "at odds with the economic substance" of the proposed transaction, is contrary to GAAP, and would violate FERC's USOA (an accounting system that, the utility notes, this Commission has

adopted). Wisconsin Electric's reply brief, p. 9. Moreover, the utility contends that retaining the net salvage costs and returning them to customers in the form of a rate credit would, in essence, constitute the sort of retroactive ratemaking explicitly prohibited by Michigan Bell Telephone Co. v Public Service Commission, 315 Mich 533 (1946). See, Id., p. 10. The company therefore contends that, because the proposed adjustment to accumulated depreciation suggested by Mr. Gorman and supported by both the Mines and the Staff is "without merit or logic," the related \$36,719 annual rate credit "is also without merit and should be rejected." Id., p. 12.

The ALJ agrees with Wisconsin Electric, and finds that the treatment of accumulated depreciation advocated by the Mines and the Staff should be rejected for three reasons. First, and as correctly noted by Ms. Wolter, those parties' proposed action regarding the depreciation account related to Edgewater-5 misstates the economic substance of the plant's sale. Specifically, she testified that:

WEPCO is only receiving \$45 million for the facility, not the \$52 million that Mr. Gorman would like to assume per his calculation in Exhibit MIN-6 (MPG-6). The net value of the facility to WP&L is only \$45 million because, after the sale, WP&L and [its] customers will be responsible for all of the costs of removal when the unit is ultimately retired. In essence, the net book price for the facility reflects that WP&L has acquired both the burden of responsibility for all costs of removal and the corresponding benefit of any amounts paid in consideration with pre-sale service (e.g., accumulated depreciation, including any portion thereof for salvage costs). As such burdens and benefits have been transferred to WP&L, WEPCO no longer has the benefit of alleged pre-paid salvage costs to pass on to retail customers via lower depreciation rates or a customer credit.

Stated another way, WEPCO is only receiving \$45 million for the facility, not the \$52 million that Mr. Gorman would like to assume per his calculation in Exhibit MIN-6 (MPG-6). Mr. Gorman's proposal is the equivalent of requiring WEPCO to record a phantom \$7 million loss on the sale of the property so that customers can receive an arbitrary "refund" of an amount that he alone considers to be "prepaid."

2 Tr 52-53 [Emphasis in original].

Second, and as Mr. Wolter also noted, “negative net salvage is not treated any differently than straight-line depreciation.” 2 Tr 51. Toward this end, she cited the following language regarding the treatment of net salvage costs from the National Association of Regulatory Utility Commissioners 1996 publication entitled *Public Utilities Depreciation Practices*:

This concept carries with it the premise that property ownership includes the responsibility for the property’s ultimate abandonment or removal. Hence, if current users benefit from its use, they should pay their pro rata share of the cost involved in the abandonment or removal of the property and also receive their pro rata share of the benefits of the proceeds realized.

This treatment is in harmony with the generally accepted accounting principles and tends to remove from the income statement any fluctuations caused by erratic, although necessary, abandonment and removal operations. It also has the advantage that current customers pay or receive a fair share of the costs associated with the property devoted to their service, even though the costs may be estimated.

Id. As such, including net salvage costs in the calculation of depreciation rates and costs underlying the rates charged to utility customers who received service from Edgewater-5 did not involve any alleged “prepayment” for a service for which those customers would be entitled to either a refund or a credit if that service had not been provided. See, Wisconsin Electric’s reply brief, p. 10. Rather, and as accurately explained by the utility, customers that received service from Edgewater-5 over the years were “properly charged at the time they received such service for an appropriate portion of the cost to retire and remove” that plant, thus meaning that no basis exists “for crediting any such amount, previously paid at rates set by the Commission for service previously provided, to rates for future service,” regardless of whether that

would be accomplished either directly (via a rate credit) or indirectly (through the retention of such amounts as accumulated depreciation). Id. To do so would, as the company contends, improperly constitute retroactive ratemaking.

Third and finally, if such amounts had--from the outset--actually been intended to be collected with the possibility of a subsequent refund or credit to ratepayers, GAAP and FERC-based accounting would have required those funds to be recorded by the utility as a liability. Instead, those funds appear to have been treated solely as a “contra-asset,” and thus left to be removed upon either the retirement or sale of the particular asset to which they relate. Id. Again, as was correctly noted by Ms. Wolter, the appropriateness of removing these sums from accumulated depreciation, as opposed to simply retaining them in the account as Mr. Gorman suggests, is confirmed by “Plant Instruction 5(F) of the USOA,” which provides as follows:

When electric plant constituting an operating unit or system is sold, conveyed, or transferred to another by sale, merger, consolidation, or otherwise, the book cost of the property sold or transferred to another shall be credited to the appropriate utility plant accounts, including amounts carried in account 114, Electric Plant Acquisition Adjustments. The amounts (estimated if not known) carried with respect thereto in the accounts of accumulated provision for depreciation and amortization in account 252, Customer Advances for Construction, shall be charged to such accounts and contra entries made to account 102, Electric Plant Purchased or Sold.

2 Tr 51. In light of this language, the joint proposal of the Mines and the Staff to retain approximately \$6.7 million of accumulated depreciation (despite the sale of the asset to which it pertains) would violate both the USOA and the GAAP standards upon which it is based.

The ALJ thus recommends that the Commission reject the joint proposal by the Mines and the Staff regarding the treatment of this asset’s accumulated depreciation.

B. Treatment of Pre-Closing Liabilities

The second of the three general conditions recommended for adoption in this proceeding concerns the future treatment of pre-closing liabilities. According to the Mines' witness, Mr. Gorman, Section 2.2(b) of the ASA includes language by which Wisconsin Electric "has agreed to retain significant environmental and operational liability associated with [Edgewater-5] after closing of the asset sale to WP&L." 2 Tr 73. He went on to state that, when the Mines inquired about whether it was common for a utility to retain such liabilities after selling its interest in a particular asset, the company responded (via an interrogatory response) that it "is not uncommon for a seller to retain pre-closing liabilities." Id. [quoting Exhibit MIN-8]. Nevertheless, he went on to assert that (1) Wisconsin Electric's assertion "is unsupported," (2) the utility stated it is "not aware of an asset sale agreement that sets forth the same allocation of pre-closing liabilities between the buyer and the seller" as agreed to in the ASA at issue in this case, and (3) he is unaware of any other utilities that have agreed to retain all liabilities related to the operation of a generating plant after divesting all of its interest in the facility. See, Tr 73-74.

In addition to Mr. Gorman's testimony, the Mines assert that other potential buyers may not have required Wisconsin Electric to retain pre-closing liabilities. Mines' initial brief, p. 25. Moreover, they contend that the utility's decision to retain such liabilities "is inconsistent with its own past practices, and the practices of its parent company, Wisconsin Energy Corporation, when divesting large assets." Id. Finally, the Mines claim that despite already being aware of various existing or threatened lawsuits against it as a result of its 25% ownership interest in Edgewater-5, the utility "did not

quantify the total potential financial impact of the identified claims” and, instead, simply stated that “the total potential liability is indeterminate.” Id., at 26 [citing Exhibit MIN-17]. According to them, the company’s failure to do so prior to agreeing to retain such pre-closing liabilities was unreasonable and imprudent. They therefore argue that, at a minimum, the Commission should condition any approval of the plant sale upon receipt of “a firm commitment from [Wisconsin Electric] that it will never seek recovery of any costs associated with [Edgewater-5’s] pre-closing liabilities from Michigan ratepayers. Id., at 29.

The Staff agrees with the Mines regarding this issue, and seeks the imposition of significant conditions regarding pre-closing liabilities (at least if the Commission elects to approve the underlying asset sale). However, its proposed conditions differ slightly from those recommended by the Mines. Specifically, in addition to obtaining a commitment from the utility not to seek recovery for any costs associated with pre-closing liabilities, the Staff proposes an alternative remedy, namely establishing “a maximum financial threshold for which Michigan ratepayers would be subject to with respect to pre-closing liabilities.” Staff’s initial brief, p. 7.

In contrast, Wisconsin Electric contends that Mr. Gorman’s testimony concerning retained pre-closing liabilities “provides no basis” for concluding that the proposed sale of the utility’s 25% interest in Edgewater-5 will somehow conflict with the public interest or have an adverse impact on rates, or that retention of certain pre-closing liabilities is either “unreasonable or inconsistent with any legal requirements or utility standards and practices.” Wisconsin Electric’s reply brief, p. 12. According to the utility, the record fails to support the joint proposal by the Mines and the Staff to condition approval of the

ASA on the company's agreement to never seek recovery of any costs arising as a result of pre-closing liabilities related to the plant's previous operation. Specifically, it asserts that there is "no evidence that such condition is necessary or appropriate to avoid an adverse impact on rates or otherwise protect customer interests." Id. As a result, the utility concludes, the joint proposal regarding pre-closing liabilities should be rejected.

In further support of that conclusion, Wisconsin Electric notes that its most recent EGEAS analysis demonstrates not only that the proposed sale of its interest in Edgewater-5 "will not have an adverse impact on rates, but also that the sale results in significant economic benefits for [the utility] and its customers." Id., p. 13. Although conceding that the retention of certain pre-closing liabilities was not a variable that was separately factored into the EGEAS analysis, the utility points out that retaining those potential liabilities neither changes nor detracts from the overall conclusion that the asset sale is beneficial for Wisconsin Electric and its Michigan ratepayers. According to the company, the joint proposal by the Mines and the Staff ignores the fact that the utility would retain these same pre-closing liabilities (the costs of which would ultimately be recovered from its customers) if it did not sell its interest in Edgewater-5. Therefore, it points out, Section 2.2(b) of the ASA "does not increase [the utility's] exposure to pre-closing liabilities to any greater extent than Wisconsin Electric would have if it retained its interest in the facility." Id.

Again, the ALJ agrees with the utility and finds that the conditions proposed by the Mines and the Staff regarding the retention of pre-closing liabilities should not be imposed in this case. This finding is based on the following three factors.

First, transactions such as that agreed to by Wisconsin Electric and WP&L, and ultimately expressed in the ASA, always involve a certain amount of give-and-take regarding their various provisions. Thus, it is unrealistic to conclude that each and every element of a particular agreement must benefit a single party (or, in the present case, one party's ratepayers). In the present case, uncontroverted evidence (in the form of the utility's November 2009 EGEAS analysis) shows that, despite the utility's retention of the various pre-closing liabilities listed in Section 2.2(b) of the ASA, the proposed sale is more beneficial--on an overall basis--than having Wisconsin Electric retain its 25% ownership interest in Edgewater-5. Because the true determination to be made by the Commission pursuant to Section 6q is whether the transaction as a whole is in the public interest (and not whether it might be better for ratepayers if none of the pre-closing liabilities were retained by the utility), the ALJ is not convinced that the conditions proposed by either the Mines or the Staff regarding such liabilities should be imposed by the Commission.

Second, it bears noting that neither Mr. Gorman's testimony nor the various briefs submitted by the Mines and the Staff reference any statute, rule, or Commission order requiring that the purchaser of a utility asset assume all pre-closing liabilities related to that asset. Likewise, the record is devoid of any reference to an established industry standard or practice demanding that the buyer assume all pre-closing liabilities.

Third, nowhere is it shown that some other potential purchaser of Wisconsin Electric's interest in Edgewater-5 was willing to assume all pre-closing liabilities related to that plant's prior operations. Thus, as correctly asserted by the utility, "any implied suggestion" to the effect that the company "could or should have found a buyer which

would assume such liabilities is speculation unsupported by any evidence.” Wisconsin Electric’s reply brief, p. 15.

For the reasons expressed above, the ALJ recommends that the Commission reject all requests to condition approval of the ASA on either Wisconsin Electric’s commitment to never seek rate recovery of costs arising from Edgewater-5’s pre-closing liabilities or on the establishment of some unspecified cap on that potential recovery.⁹

C. The Staff’s Request to Establish a Higher Purchase Price

The final issue to address in this matter arises from the Staff’s concerns regarding whether Wisconsin Electric’s solicitation process was adequate to ensure that it maximized the potential recovery from the sale of its ownership interest in this plant. According to the Staff, its concerns arise, in large part, from the fact that the utility (1) elected only to solicit interest from a few regional utilities, (2) chose not to publish a notice concerning its desire to sell this asset, and (3) decided not to use a third party to seek interest from other potential buyers. The Staff believes that because the company’s regional solicitation “resulted in discussions with several entities, then a national solicitation would have produced even more interest,” thus increasing the likelihood that a higher price could have been garnered for this asset. Staff’s initial brief, p. 6. It therefore contends that any approval of the sale of Wisconsin Electric’s 25%

⁹ In making this recommendation, however, the ALJ recognizes that (as expressly acknowledged by the utility):

To the extent, if any, that issues arise as to whether costs related to retained pre-closing liabilities should be recovered in future rates, the Commission’s ratemaking authority to address in future general rate cases the ratemaking treatment of such costs is not affected by the sale [of the utility’s interest in Edgewater-5].

Wisconsin Electric’s reply brief, p. 16.

interest in Edgewater-5 to WP&L must be conditioned on those parties agreeing to a higher price than currently provided for in the ASA.

In response, Wisconsin Electric assails the Staff's contention by pointing out that its request to alter the agreed-upon purchase price is devoid of "any applicable legal authority" and "is not supported by any competent, material, and substantial evidence."

Wisconsin Electric's reply brief, p. 17. Rather, the utility notes, the Staff's request is:

based upon a series of unsupported arguments starting with Staff's unsupported **belief** "that Wisconsin Electric's solicitation efforts were not adequate" . . . and concluding with Staff's speculation that an unspecified 'national solicitation' would have increased the purchase price by an unidentified amount . . .

Id. [emphasis in original; citations omitted]. According to the company, this request to "rewrite the most fundamental term of the ASA, which was negotiated on an arms-length basis between the parties, is without merit and should be rejected." Id., pp. 17-18. The utility therefore asserts that, because "findings of fact must be supported by competent, material, and substantial evidence on the record as a whole," and cannot be based upon "unsupported speculation," the Staff's requested condition concerning the purchase price must be rejected. Id., p. 18.

Once again, the ALJ concurs with Wisconsin Electric, and thus finds that the Staff's request to condition approval of the ASA on an increase in the asset's purchase price should be rejected. Granted, several factors surrounding the agreement ultimately reached between the utility and WP&L are at least somewhat disconcerting. These include (1) the fact that the 1983 ownership agreement between those two entities appears to have given WP&L an excessively broad "right-of-first-refusal" regarding any potential sale of Wisconsin Electric's 25% interest in Edgewater-5 to some other entity,

(2) the utility's election to essentially limit its sales offer to regional utilities, as opposed to those located elsewhere, and (3) information to the effect that at least one other interested purchaser may have been willing to offer a higher overall price for the asset, albeit based upon a significantly longer payment schedule. Nevertheless, and as correctly noted by Wisconsin Electric, no evidence was offered in this proceeding to the effect that its solicitation efforts "did not meet applicable legal requirements or industry standards" or that, "in light of the nature of the interest being sold, [the utility's] more targeted solicitation strategy was unreasonable or imprudent." *Id.*, p. 19. Moreover, no evidence was offered to support the Staff's claim that, in essence, some buyer actually existed who could be persuaded to buy the utility's share of Edgewater-5 pursuant to the terms of the ASA, but at a higher price and while also assuming all pre-closing liabilities related to that facility.

In light of the preceding discussion, the ALJ recommends that the Commission reject the Staff's proposal to condition any approval of the ASA on the agreement by Wisconsin Electric to sell, and by WP&L to buy, the utility's 25% share of Edgewater-5 at a price higher than that currently set forth in the ASA.

V.

CONCLUSION

Based on the foregoing, the ALJ recommends that the Commission issue an order adopting the findings and conclusions set forth above. Specifically, it is recommended that the Commission approve the ASA between Wisconsin Electric and WP&L, but condition such approval on the utility's agreement to provide its Michigan

ratepayers with a rate credit in the amount of \$457,912 annually (at least until issuance of its next general rate case order) to reflect all reductions in plant-related and general expenses expected to arise from the underlying asset transfer. As for all other suggestions offered by the Mines and the Staff in this case, the ALJ recommends that they be rejected.

Finally, it should be noted that any arguments or potential issues not specifically addressed in this PFD were deemed to be irrelevant to the ALJ's ultimate findings and conclusions.

STATE OFFICE OF ADMINISTRATIVE
HEARINGS AND RULES
For the Michigan Public Service Commission

Mark E. Cummins
Administrative Law Judge

October 14, 2010
Lansing, Michigan
dmp